

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL

MONDAY, MARCH 15, 2004

MEMBERS PRESENT:

Ross Williams, Chairman
Paul Hughes
Rocky Mancini
Janine Maskell
Guy Russell

MEMBERS ABSENT:

None

ALSO PRESENT:

Al LoBrutto, Town Board Liaison
Lauren Kingman, Chairman, Planning Bd.

Chairman Williams opened the meeting at 7:00 p.m. and opened the following public hearings:

1. George Carrothers for area variances and a special permit on property located on Route 199, grid number 6471-00-935427-00. Chairman Williams read the public notice which was posted timely in the paper. Neighboring landowners were notified by certified/return receipt mail of this hearing. George Carrothers was present and said the property is where the nursery was on Route 199 just before Academy Hill Road. There is a pre-existing building and pre-existing house trailer on the property. Both require setback variances, one off of 199 and one off of Moorehouse Road. Variances for parking are no longer needed. Mr. Carrothers noted to the board that the Town Board has asked that the new building inspector work on getting all highway business properties on Route 199 to conform to current zoning, which needs to be accomplished by May of 2006. As a result of this action, this property will be in compliance. Mr. LoBrutto asked why a variance is necessary to bring this into compliance and Chairman Williams said a variance is necessary in order for Mr. Carrothers to proceed with his application before the Planning Board and to get a building permit. He needs a special use permit for the restaurant. He needs an approved, conforming lot in terms of setbacks. Mr. LoBrutto asked if this is going to be a restaurant, and Mr. Carrothers said yes, which is a principal permitted use in highway business.
2. Ronald White for a special permit for a two family dwelling on property located on Becker Hill Road, grid no. 6473-00-555312-00. Chairman Williams read the legal notice which was posted timely in the paper. Neighboring landowners were notified by certified/return receipt mail of this hearing. Ronald White present and said he bought the Hapeman's old house. They had a special use permit for a two family dwelling but since the property changed hands, Mr. White as the current owner needs to reapply. Mr. White said he is living on the bottom floor and his brother is living upstairs so the house is owner occupied. Mr. LoBrutto asked if this is an existing two family. Mr. Williams said yes, and it also has a mobile home on the property with a special use permit for an accessory apartment. There was a previous subdivision that left the two family home and mobile home on one lot. A condition is that the new owner would have to be an occupant of the two family home in order for this to be a two family. Mr. White is intending to be

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL - MARCH 15, 2004
an occupant in the two family structure.

Chairman Williams opened the regular meeting at 7:10 p.m.

1. Administrative Items
 - Chairman Williams welcomed two new members, Paul Hughes and Janine Maskell.
 - Since the board had not received the minutes for February, the February 18th minutes will be approved at the April meeting.
 - Chairman Williams received a letter from Steven Maso which he will pass along to Van Talmage, Supervisor, for consideration by the Town Board.
 - ZBA Forms - Use variance, area variance, and summary forms have been updated and will be distributed to board members.
2. The board continued with the George Carrothers application. Mr. Hughes motioned to close the public hearing, Mr. Russell seconded. All aye. Motion carried. Chairman Williams read a memo he sent to the board relative to this applicant. Mr. Mancini asked if the mobile home is allowed because it is pre-existing, and Chairman Williams said it is a residential unit which is pre-existing so is allowed to continue. However, the only way a residential unit could be allowed in the highway business zone long term would be if an accessory apartment was part of the commercial structure. Mr. Carrothers said town zoning would allow an accessory apartment in the same building as a commercial business but not as a separate structure. Mr. Russell said the mobile home would have to be removed when no longer necessary. Mr. Carrothers said the property is three acres in one acre zoning. The town has to decide what is the best use of this property for the town's best interest. The possibility exists to subdivide this parcel into three separate parcels which would allow 5000 square feet on each parcel. Mr. Carrothers said we need a compromise with how much the town will allow me to develop this property making visual and financial sense without creating a strip mall along Route 199. An option would be to say when the trailer is no longer needed, it will be removed but at that point, Mr. Carrothers would be allowed to construct a stick frame structure that is more conducive visually to the property and would still generate the income currently generated with the mobile home. Chairman Williams said Mr. Carrothers could come back to Planning and propose this when the time comes.

Mr. Williams made a motion that the Town of Milan Zoning Board of Appeals approve the following resolution: BE IT RESOLVED, the ZBA grant the setback variances (both are for existing structures) that are necessary to advance consideration by the Planning Board of the construction of the restaurant, allow the continuing use of the mobile home as pre-existing while denying the request for a special use permit for an accessory apartment, and conditionally approve the necessary variances on the removal of the mobile home when it is no longer occupied by the current resident on property located on Route 199, tax grid no. 6471-00-935427-00, WHEREAS;

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL - MARCH 15, 2004

1. The property is zoned for Highway Business use and a restaurant is a permitted use.
2. The pre-existing commercial structure on the site does not meet front yard setbacks.
3. There is a pre-existing mobile home on the site that is permitted to remain.
4. There is a pre-existing residential unit, a mobile home, that is permitted to remain.
5. There is a requirement in the zoning law for owners of non-conforming highway businesses to apply for the necessary permits to bring them into compliance by 5/9/06.
6. A separate structure in the highway business zone does not qualify for a special use permit for an accessory apartment.

THEREFORE, BE IT RESOLVED, the application for a special use permit for an accessory apartment is denied and, be it further resolved, the ZBA grants the necessary setback variances for the existing structures with the following conditions:

1. The mobile home is allowed to remain on site only until the current tenant no longer has use of the mobile home or until 5/9/06, whichever occurs first, and will then be permanently removed from the site.
2. Should the current occupant of the mobile home require its continued use beyond 5/9/06, the land owner will return to the ZBA to appeal for an interpretation of the conflicting laws which require compliance with highway business requirements and which protect pre-existing residential uses and mobile homes.

Mr. Mancini seconded. Mr. Mancini asked what will happen if Mr. Smith needs the trailer after May of 2006. Chairman Williams said if that is the case, Mr. Carrothers would be required to come back before this board which would consider the requirement that the Town Board has passed to be in compliance by 5/9/2006. This board will probably favor continuing the residence but it would have to come back. Mr. Hughes asked who will follow up on this? Mr. Carrothers said the mobile home predates zoning so could remain there forever. Chairman Williams said except that all commercial properties now have to come into zoning compliance. Chairman Williams said the minimum variance necessary should be granted which will enable Mr. Carrothers to proceed but still takes into consideration the 2006 deadline. There was some additional discussion on the special permit issue. All aye 5-0 in a roll call vote. Mr. Carrothers was advised of the fees due prior to him continuing on with the Planning Board.

3. The board continued with the Ronald White application. Mr. White said he is keeping the house the same except for fixing it up. Mr. Mancini motioned to close the public hearing, Mr. Hughes seconded. All aye. Motion carried.

Chairman Williams motioned that the Town of Milan Zoning Board of Appeals approve the following resolution: BE IT RESOLVED, the ZBA approve a special permit for a two-family dwelling with regard to the application by Ronald White on property located on Becker Hill Road, tax grid no. 6473-00-555312-00, WHEREAS;

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL - MARCH 15, 2004

1. The earlier approval of a Special Use Permit for an Accessory Apartment was conditioned on a prospective new owner applying for and being granted a Special Use Permit for a Two Family Dwelling.
2. A two-family dwelling is a permitted use in an A3A zone.
3. The structure is an existing two-family dwelling.
4. This property has recently changed ownership and the new owner (the applicant) intends to reside in the home.
5. There is an accessory apartment on this property which requires owner occupancy of the primary structure.

NOW, THEREFORE, BE IT RESOLVED, a Special Use Permit for a two family dwelling be granted subject to the following conditions:

- A. Section 200-65, Revocation of Special Use Permit: if the new owner fails to comply with the special use permit requirements, the permit may be revoked by the ZBA.
- B. Section 200-17, Owner Occupancy; the new owner must continue to occupy the principal dwelling.
- C. Replacement of the mobile home - If the current mobile home is replaced, it:
 - Must meet the requirements of Section 200-34, Mobile Homes.
 - Must not exceed the current size (12 x 60 feet) unless the owner first applies to the ZBA for a revised/new special permit.
 - Must be erected in the same location and orientation unless the owner first applies to the ZBA for a revised/new special permit.

Mr. Russell seconded. All aye 5-0. Motion carried unanimously.

Mr. White paid the fees due of \$147.22.

1. Glen Brent appeared representing G&S Energy (STK Petroleum Products) for a discussion with the board. Chairman Williams said G&S (STK) applied for a floating Light Industrial Zone ruling in 1999. They went through application to the Town Board, which approved the LI zone, and then G&S came forward with a site plan. The site plan was approved and a building permit and CO granted, all within appropriate time frames prior to 10/31/2000. There was a change in control of the company, a stock based company, somewhere in 2002. At about that time, there was a decision they had not implemented the site plan as proposed and they were cited for violations. There was a flurry of letters and activity, some of which alleged that zoning had reverted back to A3A zoning as a result of the failure to implement the site plan. As a result, Mr. Brent came back to the Planning Board seeking new site plan approval. They went through several meetings with the Planning Board and ran into an issue at the public hearing where there was an allegation that this property had reverted back to prior zoning. The Planning Board at that time felt they needed an opinion from the Town Board on that which they never got. As such, there was no ruling on the new site plan. As a result, current town board passed a resolution this last Monday night which Chairman Williams read asking the ZBA to determine the current state of the LI zone and to make a ruling and get back to the Town Board in 45 days. Chairman Williams said a public hearing is required for this. Chairman Williams distributed a hand out which the board read. In response to a

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL - MARCH 15, 2004

question, Mr. Brent said all paperwork lists G&S or Steve King, president of G&S Energy. It is Mr. Brent's understanding that everything was approved under G&S. Mr. Hughes said this has to be either a d/b/a or a corporation. Mr. Brent said STK is the corporation which has filed a d/b/a to do business as G&S Energy. STK and G&S is the same entity. Steven King had stock and left but the property was never sold. Mr. King had a share in the business. Mr. Brent believes the permit was given in the name of G&S Energy. Chairman Williams showed the Certificate of Occupancy where the owner is G&S Gas Energy. Steven King was acting as president of G&S, a corporate officer. Mr. Hughes asked how can you be a corporate officer of a d/b/a, and Mr. Brent said he was an officer of STK so of G&S by default. Chairman Williams said the stock transferred and that is how the current management is in control of the company, through the stock they acquired, but the company stayed the same. Mr. Brent said the current owners financed the construction of this. Mr. King was bought out and they are the shareholders of STK, d/b/a G&S. Chairman Williams distributed a summary of events. Mr. Brent said this needs to be looked at from the code point of view, not the side issue. Mr. Mancini said the original permit was granted long before Mr. King sold out to STK. Mr. Brent said he was a share holder of STK when this was done. Chairman Williams said we need to be careful with our use of terms. This was not a permit, it was a re-zoning of the property. There is no special use permit required to have this use. There is a special use permit required for storage of flammable materials which is not mentioned in this correspondence but is different matter. Mr. Brent said we are willing to resolve this. The issue is, did the zoning revert? Chairman Williams motioned to schedule the public hearing for the next meeting, Mr. Hughes seconded. All aye 5-0. Motion carried.

Discussion items

1. Chairman Williams distributed a proposed set of administrative procedures for board which will be addressed at the next meeting to give the board a chance to review them.
2. HVC - The scoping document was approved last Wednesday night by the Pine Plains Planning Board.
3. Accessory Apartments - The proposed change to the zoning code to permit the ZBA to exercise some latitude on granting variances when an accessory apartment special use permit is applied for was not approved by the Town Board.
4. The Town Board approved omitting from the law the provision requiring individual notification to all town residents on zoning map changes.
5. Upcoming meetings:
 1. Comprehensive plan this Saturday, March 20th, town hall
 2. Greenway Compact public hearing on April 3rd, Saturday.
6. Upcoming applications:
 1. Chestnut Mart - group of businesses on Route 199 which will require variances if and when they progress with the Planning Board to that point.

ZONING BOARD OF APPEALS MEETING MINUTES - FINAL - MARCH 15, 2004

7. Land Use Training Program for Local Officials Tutorial - will be provided for new members to take. When all members complete this course, the ZBA will be certified as a board.

Mr. Mancini motioned to adjourn at 8:15 p.m., Mr. Hughes seconded. All aye. Motion carried.

The next meeting will be held on Monday, April 19, 2004 at 7:00 p.m.

Respectfully submitted,

Karen Buechele, Clerk
Planning and Zoning

cc: Town Clerk (final copy)